

## **Remarks**

The Examiner's Office action mailed September 29, 2009, which rejected pending claims 1-58, 60-102, and 107 -134, has been reviewed. Claims 1, 10, 45, 58, 102, 107, 130, and 132 - 134 have been amended. Claim 59 has been cancelled. Applicants acknowledge the Examiner's indication of allowable subject matter in 59, which has been incorporated into amended claim 45. In view of the following remarks, Applicants respectfully submit that the application is in condition for allowance.

### **Claim Rejections Under 35 U.S.C. § 101**

Claims 1-3, 7-35, and 42-102 were rejected under 35 U.S.C. § 101 as not being directed to statutory subject matter. In particular, regarding claims 1, 7-9,10-35, 42-44, 45-102, the Examiner asserts that the “applicant’s specification does not provide any description of what a stream routing processor is nor does it provide any description of what a stream caster is. Given the applicants vague disclosure it is reasonable to assume that these elements are software.” (See Office action at page 3.) As discussed below, the specification does in fact provide a description of “stream routing processor” and a “stream caster.”

Regarding a “stream routing processor,” the specification, clearly defines this claimed element as a type of processor. For example, the specification provides the “MMS 110 may have a stream routing processor (SRP) or **another type of processor** or monitor that processes requests for media using the current state of the switch. (See application, paragraph 75.) Thus, as claimed and described the stream routing processor is a processor not software.

Regarding the stream caster, the specification provides “[e]ach time the NRP 108 determines the switch that can provide the media clip, the NRP transmits an IP address of the switch or a communication device, such as a stream caster on the switch, to the viewer 116 or 118.” (See application, paragraph 64.) The specification also provides “[t]he MMS 110 streams media to a viewer 116 or 118. The MMS 110 has **other communication devices**, such as one or more stream casters and one or more media servers, that provide requested media to a viewer 116 or 118. The MMS 110 monitors **all communication devices, such as one or more stream casters** and one or more media servers, within the MMS so that at any time the MMS can determine if it can provide a requested media.” (See application, paragraph 74.) The specification further provides that “[t]he NRP 108 may use the domain name system (DNS)

protocol to receive the media locator request from the viewer 116 and 118 and to return an IP address of the stream caster in the MMS.” (See application, paragraph 72.) Applicants submit that those skilled in the art understand that communication device on a network have IP addresses, while software does not. Thus, as claimed and described the stream caster is clearly a communication device and is not software.

Moreover, the MPEP indicates that when software is recorded on some computer readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases. (See MPEP 2106.01.) A computer-readable medium encoded with a computer program is a computer element, which defines the structural and functional interrelationships between the computer program and the rest of the computer, which permits the computer program’s functionality to be realized and is statutory. (See MPEP 2106.01(I).) The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer. (See MPEP 2106.01(I).) Applicants submit that even if software is a part of the claimed system, amended claims 1, 10, 45, and 102 all recite, in part, a stream routing processor executing instructions to perform the functionality of the system. Thus, the amended claims define structural components of a system and functional interrelationships the structural components. For example, structural and functional interrelationships are defined between a stream routing processor, a stream caster, a viewer, and/or switch controller, which permit the functionality of the claimed system to be realized.

For the reasons above, Applicants submit that claims 1-3, 7-35, and 42-102 directed to statutory subject matter, and, thus, in compliance with 35 U.S.C. § 101.

#### Claim rejections under 35 U.S.C. § 102

The Examiner rejected claims 1-58, 60-102, and 107 -134 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Number 6,385,596 to Wiser et al. (“Wiser.”) Applicants submit that Wiser fails to disclose, teach, or suggest each and every element of Applicants’ claims and, thus, Wiser is not an anticipatory reference under 35 U.S.C. § 102(e).

MPEP 2131 states: “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”

(citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). A claim cannot be rejected under 35 USC 102 unless each and every claim limitation is found in the cited reference. Moreover, unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102. *Net MoneyIn, Inc. v. Verisign, Inc.* 545 F.3d 1359 (Fed Cir. 2008).

The following is independent claim 1 with underlined portions that are not disclosed, taught, or suggested by the cited reference.

1. A system for streaming media to a viewer for a request for the media, the system comprising:

a stream routing processor executing instructions to:

receive reservation data comprising a valid reservation identification; and  
transmit the valid reservation identification; and

a stream caster to:

receive a reservation identification for the request;

receive the reservation data identifying the valid reservation identification from  
the stream routing processor; and

validate the reservation identification using the valid reservation data; and

stream at least partially the media to the viewer when reservation identification is  
valid.

In applying the teachings of Wiser to the claims, Applicants respectfully submit that the Examiner has incorrectly equated “delivery server 118” described in Wiser with the “stream caster” as claimed and described in the present application. Regarding claim 1, the Examiner asserts that “Wiser teaches and a stream caster configured to receive a reservation identification, to receive the reservation data identifying the valid reservation identification from the stream routing processor, to validate the reservation identification using the valid reservation data, and, if valid, to stream at least partially a requested media (col. 19, lines 8-10 and 33-43, the delivery server 118 is the stream caster and the voucher ID is the reservation). (See Office action at page 4.) As an initial matter, Applicants disagree that the stream caster 112 disclosed in Wiser

corresponds to the stream routing processor as described and claimed in the present application. Moreover, even if the stream caster and the delivery server 118 were equivalent, which Applicants dispute, the delivery server 118 is not arranged or combined in the same way as the stream caster recited in the claim 1.

Wiser discloses an “online music distribution system that provides consumers with the flexibility and ease of use in the selection, previewing, downloading, and transporting of audio and other digital media over the Internet.” (See Wiser, column 3, lines 6-9.) With respect to the portion of Wiser cited by the Examiner as disclosing the claimed stream routing processor, Wiser provides:

“The delivery server 118 sends 950 the encrypted data and the cleartext voucher ID 302 to the content manager 112 for verification.” (See Wiser, column 19, lines 8-10.)

In contrast, the claimed stream caster is configured to receive a reservation identification, to receive from the stream routing processor the reservation data identifying the valid reservation identification, to validate the reservation identification using the valid reservation data, and, if validated, to stream at least partially the requested media. For example, the present application discloses “The stream caster 206 receives the invalid reservation identification, compares the invalid reservation identification with the reservation data received from the SRP 202, determines that the reservation identification is, not valid, and terminates the session with the viewer 118. (See application, paragraph 161.)

Neither the cited portion nor any other portion of Wiser discloses that the deliver server validates the reservation or the voucher ID. In fact, the cited portion of Wiser discloses teaches away from the delivery server 118 validating the reservation data or voucher ID data by disclosing that delivery server 118 **sends** the encrypted data and the cleartext voucher ID to the content manager 112 for verification, which is also not equivalent to stream caster, validates that the voucher ID. Applicants point out that a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983).

For the reasons discussed above, Applicants submit that Wiser not only fails to teach, or suggest each and every element of amended claim 1, but the cited references clearly does not disclose all of the limitations arranged or combined in the same way as recited in claim 1. Thus, independent claim 1 is not anticipated by Wiser.

Claim 10 is patentable over Wiser under 35 U.S.C. § 102(e). The following is claim 10 with underlined portions that are not disclosed, taught, or suggested by the cited reference.

10. A switch for streaming media to a viewer for requested media, the switch comprising:

a stream routing processor executing instructions to:

receive signaling inquiring if the switch can stream the requested media;  
determine if the switch is configured to stream the requested media; and  
receive reservation data comprising a valid reservation identification when the  
switched is configured to stream the media; and

a stream caster to:

receive a reservation identification for the requested media;  
receive from the stream routing processor the reservation data identifying the  
valid reservation identification;  
validate the reservation identification using the valid reservation data; and  
stream at least partially the requested media to the viewer when the  
reservation identification is valid.

The remarks made above with respect to claim 1 and the disclosures of Wiser similarly apply to claim 10. With respect to claim 10, Wiser fails to teach, disclose, or suggest a stream caster to validate the reservation identification using the valid reservation data. Again, Wiser does not disclose that the delivery server, which Examiner asserts is equivalent to the stream caster, validating a reservation identification. In fact, Wiser teaches away from this claimed aspect.

Amended claim 45 is patentable over Wiser under 35 U.S.C. § 102(e) because the underlined portions of independent claim 45 below are not disclosed, taught, or suggested by the cited references.

45. A system for streaming media to a viewer comprising:

a stream caster to:

accept a session from the viewer to stream at least partially a requested media  
upon both receiving and validating a reservation identification for the  
requested media using a valid reservation identification;  
create at least one information block for a session, wherein the information block  
comprises the reservation identification, an identification of streamed  
media, a presentation identification, a media server identification, a stream  
caster identification, a media player identification, and a data packet path  
identification; and

a stream routing processor executing instructions to:

determine if the stream caster is configured to stream the requested media; and  
receive reservation data comprising the valid reservation identification when the  
stream caster is configured to stream the requested media; and  
transmit the valid reservation identification to the stream caster.

The remarks made above with respect to claim 1 and the disclosures of Wiser similarly apply to claim 45. With respect to claim 45, Wiser fails to teach, disclose, or suggest a stream caster to accept a session from the viewer to stream at least partially a requested media upon both receiving and validating a reservation identification for the requested media using a valid reservation identification.

Moreover, amended claim 45 recites a stream caster to create at least one information block for a session, wherein the information block comprises the reservation identification, an identification of streamed media, a presentation identification, a media server identification, a stream caster identification, a media player identification, and a data packet path identification. As acknowledged by the Examiner, the cited reference does not these claimed elements and this subject matter is allowable.

Amended claim 102 is patentable over Wiser under 35 U.S.C. § 102(e) because the underlined portions of independent claim 102 below are not disclosed, taught, or suggested by the cited references.

102. A switch for streaming media to a viewer comprising:  
a stream caster to accept a session from the viewer to stream at least partially a requested  
media upon receiving and validating a reservation identification using

a valid reservation identification;

a stream routing processor executing instructions to:

determine if the stream caster is configured to stream the requested media, and receive reservation data comprising the valid reservation identification when the stream caster is configured to stream the requested media; and transmit the valid reservation identification to the stream caster; and

a switch controller to monitor the stream caster during streaming and to notify the stream routing processor of a status of the stream caster.

The remarks made above with respect to claim 1 and the disclosures of Wiser similarly apply to claim 102. With respect to claim 102, Wiser fails to teach, disclose, or suggest a stream caster to accept a session from the viewer to stream at least partially a requested media upon receiving and validating a reservation identification using a valid reservation identification.

Regarding claim 102, the Examiner also asserts that Wiser discloses "a switch controller configured to monitor the stream caster and to notify the stream routing processor of a status of the stream caster (col. 14, line 59-col. 15, line 18.)." (See Office action at page 21.) The Examiner also states that the applicant's specification provides no limiting definition of a "switch controller" so the functionality performed by the content manager reads on this limitation). Applicants disagree.

The present application discloses "The switch controller 204 filters the state data and notifies the SRP 202 and the RTSMS 106 of any events that effect the current capacity of the MMS 110A, require the not to exceed capacity items to be altered, or if the event impacts ***ongoing streaming*** services or the capacity. The switch controller 214 also monitors and feeds the SRP 202 and RTSMS 106 any information required about non-service generated events. The switch controller 204 also can act as a go between in altering the provisioning of the stream casters 206 and 208." (See application, paragraph 140.) (Emphasis added.)

Applicants have reviewed the cited portion of Wiser and respectfully submit that it does not teach a switch controller to monitor the stream caster ***during streaming*** and to notify the stream routing processor of a status of the stream caster as claimed. If the Examiner believes otherwise, Applicants request the Examiner to identify the specific column and line numbers where this limitation is disclosed in compliance with MPEP 707 and 37 CFR 1.104(c)(2).

Amended claim 107 is patentable over Wiser under 35 U.S.C. § 102(e) because the underlined portions of independent claim 107 below are not disclosed, taught, or suggested by the cited references.

107. A method for streaming media from a switch comprising:  
determining if a stream caster is configured to stream a requested media;  
receiving reservation data comprising a valid reservation identification at the stream caster; and  
accepting a session to stream at least partially the requested media upon receiving and validating a reservation identification using the valid reservation identification at the stream caster.

The remarks made above with respect to claim 1 and the disclosures of Wiser similarly apply to claim 107. With respect to claim 107, Wiser fails to teach, disclose, or suggest accepting a session to stream at least partially the requested media upon receiving and validating a reservation identification using the valid reservation identification at the stream caster.

Amended claim 130 is patentable over Wiser under 35 U.S.C. § 102(e) because the underlined portions of independent claim 130 below are not disclosed, taught, or suggested by the cited references.

130. A method for streaming media from a switch comprising:  
receiving at a stream caster reservation data comprising a valid reservation identification; and  
terminating an attempted session to stream requested media upon receiving and invalidating a reservation identification using the valid reservation identification at the stream caster.

The remarks made above with respect to claims 1 and 107 and the disclosures of Wiser similarly apply to claim 130. With respect to claim 130, Wiser fails to teach, disclose, or suggest terminating an attempted session to stream requested media upon receiving and invalidating a reservation identification using the valid reservation identification at the stream caster. As described above, Wiser does not disclose that the delivery server 118 validates anything.

Similarly, Wiser does not disclose that the delivery server invalidates a voucher ID. Again, Wiser discloses that the voucher ID is sent to the content manager.

Amended claim 132 is patentable over Wiser under 35 U.S.C. § 102(e) because the underlined portions of independent claim 132 below are not disclosed, taught, or suggested by the cited references.

132. A method for streaming requested media from a switch comprising:  
receiving at a stream routing processor signaling inquiring if the switch is configured to stream the requested media;  
determining at the stream routing processor if the switch is configured to stream the requested media, and, if so, acknowledging the inquiry;  
receiving reservation data at the stream routing processor, the reservation data\_comprising a valid reservation identification;  
receiving a reservation identification at a streaming device;  
validating the reservation identification using the valid reservation data at the streaming device, and, if validated, streaming at least partially the requested media.

The remarks made above with respect to claim and the disclosures of Wiser similarly apply to claim 132. With respect to claim 132, Wiser fails to teach, disclose, or suggest validating the reservation identification using the valid reservation data at the streaming device, and, if validated, streaming at least partially the requested media.

Amended claim 133 is patentable over Wiser under 35 U.S.C. § 102(e) because the underlined portions of independent claim 133 below are not disclosed, taught, or suggested by the cited references.

133. A method for streaming media to a viewer comprising:  
determining if a streaming device is configured to stream requested media, and, if so,  
receiving reservation data comprising a valid reservation identification and  
transmitting the valid reservation identification; and  
accepting a session from the viewer at the streaming device to stream at least partially the requested media upon receiving and validating a reservation identification using the valid reservation identification at the streaming device.

The remarks made above with respect to claims 1 and 107 and the disclosures of Wiser similarly apply to claim 133. With respect to claim 133, Wiser fails to teach, disclose, or suggest accepting a session from the viewer at the streaming device to stream at least partially the requested media upon receiving and validating a reservation identification using the valid reservation identification at the streaming device.

Amended claim 134 is patentable over Wiser under 35 U.S.C. § 102(e) because the underlined portions of independent claim 107 below are not disclosed, taught, or suggested by the cited references.

134. A method for streaming media from a switch comprising:  
determining at a stream routing processor if a streaming device is configured to stream requested media;  
receiving reservation data comprising a valid reservation identification at the stream routing processor and transmitting the valid reservation identification to the streaming device;  
accepting a session to stream at least partially the requested media upon receiving and validating a reservation identification using the valid reservation identification at the streaming device; and  
monitoring the streaming device during streaming and notifying the stream routing processor of a status of the streaming device.

The remarks made above with respect to claims 1 and 102 and the disclosures of Wiser similarly apply to claim 134. With respect to claim 134, Wiser fails to teach, disclose, or suggest accepting a session to stream at least partially the requested media upon receiving and validating a reservation identification using the valid reservation identification at the streaming device. The cited reference also fails to teach, disclose, or suggest monitoring the streaming device during streaming and notifying the stream routing processor of a status of the streaming device.

Because claims 1, 10, 45, 102, 107, 130, 132-134 are believed patentable, it is not necessary to discuss patentable limitations of claims depending there from, the reference, or the

rejections. The lack of a discussion of patentable limitations of those dependent claims should not be construed to mean that there are not patentable limitations in those dependent claims.

Further, all reasons for patentability of the independent and dependent claims have not necessarily been discussed herein. No implication or construction should be made therefore.

Applicants have no further remarks with regard to any references cited by the Examiner and made of record, whether or not acted upon by the Examiner in the action's rejections, even if specifically identified in the action or any other paper or written or verbal communication. No implication or construction should be drawn about any review of the same by Applicants or Applicants' attorney.

Based on the foregoing, it is submitted that the Applicants' claims 1-58, 60-102, and 107-134 are patentable over the references of record. Issuance of a Notice of Allowance is solicited.

Applicants' attorney welcomes the opportunity to discuss the case with the Examiner in the event that there are any questions or comments regarding the response or the application.

This is intended to be a complete response to the Examiner's Office action mailed on September 29, 2009.

Respectfully submitted,

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